In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-102

WALTER JOHN MCANDREW AND LAWRENCE EDWARD MCANDREW BY THEIR GUARDIAN AD LITEM WALTER JOSEPH MCANDREW

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Both petitioners registered with their local draft board when they were 18 years old and were ultimately classified I-A. They sought a personal appearance before the board in an attempt to be reclassified I-A-O (conscientious objection). Both appeared with counsel but were denied the assistance of counsel by the Board. They refused to proceed without counsel. The Board later informed petitioners that their classifications were to remain as before. Petitioners then filed timely requests for administrative appeals but also brought this action in the district court to set aside their I-A classifications and to require the

Board to grant new personal appearances at which they would be allowed representation by counsel (Pet. App. 4).

We respectfully invite the attention of the Court to the following facts which show that the petition for a writ of certiorari was filed out of time:

On March 12, 1971, the court of appeals affirmed the district court's order of dismissal in this case (Pet. App. 1). A timely petition for rehearing was denied by the court of appeals on April 12, 1971 (Pet. App. 2). The time within which to file a petition for a writ of certiorari therefore expired on July 12, 1971, and no extension was sought. The petition was filed on July 19, 1971, 98 days after the denial of rehearing.

28 U.S.C. 2101(c) provides that "any writ of certiorari intended to bring any judgment or decree in a civil action * * * before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Since this limitation is jurisdictional, the petition should be denied as untimely.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1971.

U. S. GOVERNMENT PRINTING OFFICE: 1971